

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF VIRGINIA

JUL 27 2016

JULIA C. DUDLEY, CLERK  
BY: [Signature] DEPUTY CLERK

RICHARD KIGHTLEY,

Plaintiff,

v.

SEATGEEK, INC.

Defendant.

Civil Action No.: 316CV00055

COMPLAINT AND JURY  
DEMAND

**COMPLAINT FOR COPYRIGHT INFRINGEMENT**

Plaintiff, RICHARD KIGHTLEY ("Plaintiff"), brings this complaint in the United States District Court for the Western District of Virginia against SEATGEEK, INC. ("Defendant"), alleging as follows:

**PARTIES**

1. Plaintiff is a citizen of Great Britain and an internationally-recognized landscape and portrait photographer who currently resides in Nottingham, England.
2. On information and belief, Defendant is a corporation existing under the laws of the State of New York, with headquarters in New York, New York. Defendant is a ticket search engine that searches other ticket websites and presents the results. Defendant has a national following and has been featured on such websites as: NBC Yahoo, Forbes, The Wall Street Journal, among others.

### **JURISDICTION AND VENUE**

3. This is a civil action seeking damages for copyright infringement under the copyright laws of the United States (17 U.S.C. § 101 et seq.).
4. This Court has jurisdiction under 17 U.S.C. § 101 et seq.; 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338(a) (copyright).
5. This Court has personal jurisdiction over the Defendant, and venue in this District is proper under 28 U.S.C. § 1391(b) and 28 U.S.C. § 1400(a), in that a substantial part of the acts of infringement complained of herein occurred in this District.

### **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

6. Plaintiff is a talented, experienced, commercial photographer. His photographs, particularly those of artistic landscapes, are displayed and licensed worldwide on his Flickr website, <https://www.flickr.com/photos/richstroller/with/7361718278/>, and Facebook website, <https://www.facebook.com/rkphotographeruk/>. On his Flickr website, Plaintiff has posted under all his photographs the following text: “© All rights reserved.”
7. Plaintiff captured the Copyrighted Photograph on or about June 9, 2012. The Copyrighted Photograph was first published on his Flickr website on June 11, 2012.
8. Plaintiff filed an application with the United States Copyright Office for copyright of the Copyrighted Photograph on May 10, 2016 (Case No.: 1-337919829).
9. Beginning on or around January 2014, Defendant copied and posted the Copyrighted Photograph on their company website, [www.seatgeak.com](http://www.seatgeak.com). The Copyrighted Photograph is currently being used as part of the advertising material for upcoming Father John Misty

concerts ([www.seatgeek.com/father-john-misty-tickets](http://www.seatgeek.com/father-john-misty-tickets)), as well as thumbnail images and links on the periphery of web pages with information on other concerts featured on Defendant's website ([www.seatgeek.com/tinariwen-tickets](http://www.seatgeek.com/tinariwen-tickets), [www.seatgeek.com/twin-sister-tickets](http://www.seatgeek.com/twin-sister-tickets), [www.seatgeek.com/jonathan-wilson-tickets](http://www.seatgeek.com/jonathan-wilson-tickets), [www.seatgeek.com/matthew-e-white-tickets](http://www.seatgeek.com/matthew-e-white-tickets)).

## **COUNT I**

### **INFRINGEMENT OF COPYRIGHT PURSUANT TO 17 U.S.C. §101 ET SEQ.**

10. Plaintiff incorporates herein by this reference each and every allegation contained in each paragraph above.
11. Plaintiff is, and at all relevant times has been, the copyright owner or licensees of exclusive rights under United States copyright with respect to certain copyrighted photograph, including but not limited to "Josh Tillman", the copyrighted photograph identified in Exhibit A attached hereto, of which is the subject of a pending Certificate of Copyright Registration issued by the Register of Copyrights ("Copyrighted Photograph").
12. Among the exclusive rights granted to each Plaintiff under the Copyright Act are the exclusive rights to reproduce the Copyrighted Photograph and to distribute the Copyrighted Photograph to the public.
13. Plaintiff is informed and believes that Defendant, without the permission or consent of Plaintiff, has used the Copyrighted Photograph on Defendant's public website, [www.seatgeek.com](http://www.seatgeek.com). In doing so, Defendant violated Plaintiff's exclusive rights of reproduction and distribution. Defendant's actions constitute infringement of Plaintiff's

copyrights and exclusive rights under copyright. (Exhibit B contains a copy of the Defendant's website pages displaying the Copyrighted Photograph).

14. Plaintiff is informed and believes that the foregoing act of infringement was willful and intentional, in disregard of and with indifference to the rights of Plaintiff.
15. As a result of Defendant's infringement of Plaintiff's copyrights and exclusive rights under copyright, Plaintiff is entitled to statutory damages pursuant to 17 U.S.C. § 504(c) for Defendant's infringement of the Copyrighted Photograph. Plaintiff is further entitled to their attorneys' fees and costs pursuant to 17 U.S.C. § 505.

## **COUNT II**

### **CONTRIBUTORY INFRINGEMENT**

16. Plaintiff is informed and believes that Defendant, without the permission or consent of Plaintiff, knowingly induced, caused, and materially contributed to copyright infringement by sharing the Copyrighted Photograph with other companies, namely Uloop ([www.uloop.cm](http://www.uloop.cm)), and Roundtown ([www.roundtown.com](http://www.roundtown.com)). The Copyrighted Photograph was copied and posted on the following Uloop web pages: [www.utulsa.uloop.com/tickets/?page=5](http://www.utulsa.uloop.com/tickets/?page=5), [www.minneapolis.uloop.com/tickets/?hft=1](http://www.minneapolis.uloop.com/tickets/?hft=1), [vanderbilt.uloop.com/tickets/?htf=1](http://vanderbilt.uloop.com/tickets/?htf=1). The Copyrighted Photograph was copied and posted on the following Roundtown web pages: [www.roundtown.com/event/9030916/Father-John-Misty-Indianapolis-IN](http://www.roundtown.com/event/9030916/Father-John-Misty-Indianapolis-IN), [www.roundtown.com/event/9030916/Father-John-Misty-Portland-ME](http://www.roundtown.com/event/9030916/Father-John-Misty-Portland-ME), [www.roundtown.com/event/9030916/Father-John-Misty-with-Angel-Olsen-New-York-City-NY](http://www.roundtown.com/event/9030916/Father-John-Misty-with-Angel-Olsen-New-York-City-NY).

17. Plaintiff is informed and believes that Defendant, without the permission or consent of Plaintiff, had knowledge or reason to know of such contributory infringement.
18. As a result of Defendant's actions, Plaintiff is entitled to actual damages or such other and further relief as is just and proper. Plaintiff is further entitled to their attorneys' fees and costs pursuant to 17 U.S.C. § 1203(b)(5).

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- A. Declaring that Defendant's unauthorized conduct violates Plaintiff's rights under the Federal Copyright Act;
- B. Immediately and permanently enjoining Defendant, their officers, directors, agents, servants, employees, representatives, attorneys, related companies, successors, assigns, and all others in active concert or participation with them from copying and republishing Plaintiff's Copyrighted Photograph without consent or otherwise infringing Plaintiff's copyright or other rights in any manner;
- C. Ordering Defendant to account to Plaintiff for all gains, profits, and advantages derived by Defendant by their infringement of Plaintiff's copyright or such damages as are proper, and since Defendant intentionally infringed Plaintiff's copyright, for the maximum allowable statutory damages for each violation;
- D. Awarding Plaintiff actual and/or statutory damages for Defendant's copyright infringement in an amount to be determined at trial;

- E. Awarding Plaintiff his costs, reasonable attorneys' fees, and disbursements in this action, pursuant to 17 U.S.C. § 505, 17 U.S.C. § 1203(b)(3), and § 1203(b)(5); and
- F. Awarding Plaintiff such other and further relief as is just and proper.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury on all claims for which there is a right to jury trial.

Dated: July 25, 2016

A handwritten signature in black ink, appearing to read 'David C. Deal', is written over a horizontal line.

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